

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code Sec. 150.801(c). (This is a GIL).

February 26, 2001

Dear Xxxxx:

This letter is in response to your letter that we received on January 9, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I will be attending the Feb 23-24-25 show in CITY. I am a hunting & fishing consultant & will be handing out brochures at the show. I also have a sample line of hunting clothes & hand out information on that also. I do not sell any goods at the shows. The clothes are there for people to find the correct size if they wish to order later. If I need any license or have to pay any tax please advise.

Whether you need a license or have to pay sales tax depends upon whether your activities in Illinois constitute nexus under applicable tax law. In this case, the "license" would be a certificate of registration under the Retailers' Occupation or Use Tax Acts. The Department is not able to make nexus determinations because the amount of information required to make that determination is usually best gathered by an auditor. The following information about nexus and Illinois retail sales is provided for your consideration. We hope it is useful for you in determining your Illinois sales tax responsibilities.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax (sales tax) on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers. If a vendor attends an Illinois trade show for a few days, and accepts purchase orders at that show, he would be making Illinois retail sales subject to Retailers' Occupation Tax. This would be true even if he later ships the goods from an out-of-State location to the Illinois customers.

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (see 86 Ill. Adm. Code Sec. 150.201(i), enclosed), must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code Sec. 150.801(c), enclosed. The retailer must collect and remit Use Tax to the State on behalf of his Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The U.S. Supreme Court in Quill v. North Dakota, 112 S. Ct. 1902 (1992) set forth guidelines for determining what nexus requirements must be met before a business is properly subject to a state's tax laws. Quill invoked a two-prong analysis consisting of 1) whether the Due Process Clause is satisfied, and 2) whether the Commerce Clause "substantial nexus" test is met before the state can impose tax collection responsibilities.

The due process test will be met if requiring the retailer to collect state sales tax is fundamentally fair to the retailer. If the retailer intentionally avails itself of the benefits of the taxing state's economic market, then due process is satisfied, Quill at 1910.

Notwithstanding the fact that due process has been met, a business must also have a physical presence in the taxing state in order for the "substantial nexus" test to be met under the Commerce Clause and before a state can impose tax collection responsibilities on an out-of-State retailer. A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative, and it is immaterial for tax purposes that the representative's presence is temporary.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales to Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on their purchase of the tangible personal property and have a duty to self-assess their Use Tax and pay it directly to the Illinois Department of Revenue.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.